HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 461 (S/S)2003

1. Banshidhar Joshi S/o Late Sri Gobardhan Joshi,
2. Km. Janki Bisht D/o Late Sri Manohar Datt Bisht.

….Petitioners.

Vs.

State of Uttaranchal through Secretary,
Rajya Sampati Vibhag, Uttaranchal Shasan,
Dehradun and another. ….Respondents.

Sri Manoj Tewari, learned counsel for the petitioners,
Sri B.D. Upadhyaya, learned Counsel for the respondents..

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Manoj Tewari, learned counsel for the petitioners and Sri B.D. Upadhyay, learned Counsel for the respondents.

By means of this petition, the petitioners have prayed for a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to consider the claim of the petitioners for regularisation in accordance with the provisions of U.P. Regularisation of Daily Wages Appointment of Group-C posts (outside the purview of U.P. Public Service Commission) Rules 1998.

Brief facts of the case are that the petitioners are continuing as Daily Wager on Class III posts in Estate Department of State Government since 1986/1989. The petitioners were qualified for regular appointment on Class-III post. The petitioner no. 1 was appointed as Counter Clerk cum Store Keeper in State Guest House, Nainital w.e.f. 01.09.1986 and the petitioner no. 2 was appointed on daily wages as Assistant Librarian in the Department vide order dated 19.08.1989. Since than the petitioner no. 1 is serving as Counter Clerk cum Store Keeper till date and the petitioner no. 2 was appointed on the post of Telephone Operator and, as such, she is discharging duties of the Telephone Operator and after October 2002 the petitioner no. 2 is serving as Telephone Operator in the Telephone Exchange of State Guest House, Nainital.

A number of Class-III posts fell vacant time to time after the appointment of the petitioners, however the petitioner were not regularised against those sanctioned posts. A number of representations

were submitted before the authorities concerned but the petitioners have not been regularized in spite of repeated representations.

Learned counsel for the petitioners has submitted that the petitioners are entitled to be regularised under the U.P. Regularisation of Daily Wages Appointment on Group-C posts (outside the purview of U.P. Public Service Commission) Rules 1998. Rule-4 of the aforesaid Rules provides that any person who was directly appointed on Daily Wages of Group-C post in the Govt. service before June 29, 1991 and is continuing in service, as such, on the date commencing of these Rules if he posses requisite qualification prescribed for regular appointment for the post, shall be considered for regular appointment on Group-C post against permanent and temporary vacancy as may be available on the date of commencing of these Rules.

Submission of the petitioners is that they are qualified to be appointed on Group-C post and since, they were appointed prior to June 29, 1991, which is cut of date, as mentioned in the aforesaid Rules, they are entitled to be regularised.

The respondents have filed a counter affidavit. In para 13 of the counter affidavit, the respondents have stated that certain posts are lying vacant in Class-III cadre of Rajya Sampati Vibhag, but these posts can only be filled by the procedure laid down in the concerned Service Rules. The promotions are not made in isolation but they are made considering the total strength in the concerned pay scale.

Thus, it is admitted by the respondents that the posts of Class-III are lying vacant against which the candidature of the petitioners for their regularisation can be considered under the aforesaid Rules.

It is not disputed that the petitioners are qualified to be appointed as Class-III employees. It is also not disputed that the Regularisation Rules were framed in the year 1998, which provide that the person who have been appointed on Daily Wages from June 1991 may be regularised in service against the existing vacancy if they are qualified. In the counter affidavit, the respondents have not stated anywhere that the petitioners are not qualified or they were appointed as Daily Wager after June 29,1991. Further, the respondents have submitted that the posts are lying vacant with the Department. The only submission made

on behalf of the respondents is that no final allocation has been made by Union of India is respect for the Estate Department between the State of U.P. and State of Uttaranchal.

For the facts mentioned above, the writ petition is allowed. The respondents are directed to consider the petitioners for their regularisation against the vacant posts lying in the Department and pass appropriate orders within two months from today. No order as to costs.

(M.M. Ghildiyal, J.)

July 20, 2004:
NCM: